



March 25, 1999

Ms. Anne Paddock
Deputy General Counsel
Texas Department of Housing
and Community Affairs
P.O. Box 13941
Austin, Texas 78711-31941

OR99-0827

Dear Ms. Paddock:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 122932.

The Texas Department of Housing and Community Affairs (the “department”) received an open records request from a former department employee for “the computer files containing my work product using Microsoft Word and Microsoft Excel.” You contend that the requested information is excepted from required public disclosure pursuant to section 552.103 of the Government Code.

To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); Open Records Decision No. 588 at 1 (1991). You explain that the requestor and two other former department employees have filed a whistle-blower action against the department in district court. You further inform us that “[a] central issue of the litigation appears to be [the requestor’s] job performance” and that “documentation” of his job performance is reflected in the information at issue. Given this argument alone, we cannot conclude that you have met your burden of establishing that the requested information “relates” to the pending litigation for purposes of section 552.103.

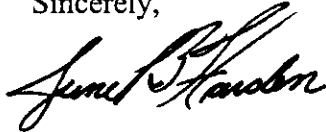
Even if we were to conclude otherwise, however, we note that once an opposing party in the litigation has seen or had access to information otherwise subject to section 552.103, there is no justification for withholding that information from the public under this exception. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Consequently, even if the requested

records relate to the litigation for purposes of section 552.103, we conclude that this exception is inapplicable here because the requestor has had prior access to all of this information.

You have not raised any other exception to public disclosure with regard to this information. We, therefore, conclude that the department must release the requested information in its entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "June B. Harden". The signature is fluid and cursive, with the first name "June" being more prominent.

June B. Harden
Assistant Attorney General
Open Records Division

JBH/RWP/ch

Ref.: ID# 122932

Enclosures: Submitted compact disk

cc: Mr. Raymond Orozco
6708 Clubway Lane
Austin, Texas 78745
(w/o enclosures)